Topic 59 Censorship, protection from libel suits, etc. [mo=Maurice Weitman] Tue, Jul 20, 1993 (18:49)

Remember "You own your own words?" It was Stewart's attempt to limit the WELL's liability to libelous/slanderous postings. In my very humble opinion, it won't.

One problem is that there isn't much case law covering an electronic publisher's (that's us) liability for what's posted on their system. Cubby vs. Compuserve, in a somewhat related matter, held that CIS wasn't liable since they can't be expected to know everything that gets posted on their system.

In a recent case here, I was told by a host that a user had posted something that he thought was actionable in one of his conferences. I read it, asked the opinion of three lawyers, and agreed with all three that the posting should be removed. I asked the poster to remove it. When he declined, I removed it.

Here's the original posting, fyi:

media.598: The New Yorker

media.598.106: Gene Schoenfeld (els) Thu 20 May 93 12:55

Last night a girlfriend told me of her sexual encounters with Jeffrey Masson. She doesn't read newspapers and is unaware of the present Federal trial in San Francisco. She met Masson in 1990-91 while she was working in Berkeley.

Masson invited her to his restaurant. He took her into a bathroom, began "butt-grinding"(her terminology) and ejaculated in his trousers. On another occasion, he offered to give her a massage. The massage was interrupted when he ejaculated on her back. He drove up to her place of employment once and offered to drive with her to Good Vibrations, buy some sex toys and try them out in his car. She declined, telling him she had only a half hour lunch break. When I told her one of the allegations in Massons suit was mention of his sexual hijinks, she said, "That sounds just like him. He would only talk about sex."

She is willing to identify herself and tell her story in an appropriate venue. She is an attractive single working mother of modest means. If anyone has ideas send me email or telephone my office at 415: 331-6832.

---------- end of posting ----------

Now, for context, this is the guy who was suing Janet Malcom and The New Yorker magazine for I've forgotten how much. He is a demonstrated litigious character. While it would be possible that EFF or someone else with deep legal pockets would love to back us up in some cases like this, I didn't think this was a compelling enough case to go to the mat for.

I've met and spoken with Mr. Barlow about this, and he would like us to never censor anything on the WELL again. I wouldn't mind taking such a stand, either, but I can't obligate the rest of you, nor am I willing to, as a member of the board, take on the financial obligation of a million-dollar suit. I've tried to get an answer from barlow and Jerry Berman (the Exec. Director (?) of EFF) about whether EFF would back us, but haven't gotten an answer yet. That would only cover the legal costs anyhow.

This is a ridiculously Big Thing, and I just wanted to get this part out there for you all to noodle about. I'd like to discuss this at the next meeting (September 17), but we probably should begin here.

4 responses total.

59.1 L=13 [kk=Kevin Kelly] Wed, Jul 21, 1993 (18:02)
I'm of two minds, neither of which belongs to a lawyer. On the one hand, I certainly don't want the WELL to become a test case for some very ambiguous law. On the other, I think the WELL should made law by being brave about what it does.

If this was publishable in a newspaper there is no question that it is actionable. But online, it certainly is a different kettle of fish. I find myself somewhat to Barlow's side. I am also uncomfortable with the idea that we react only to those postings made about people who are litigious. I would rather any censoring done (I'm not a absolutist in this regrard, unlike Barlow, I guess) be done on some larger principle and that it be consistant acros the board. Can the WELL make rumor-mognering illegal? I don't thinkit should, or could.

59.2 L=12 [barlow=John Perry Barlow] Thu, Jul 22, 1993 (05:59)
Sorry, Mo. I've been meaning to give you a call about this. And I will soon. Really.

I have talked to the EFF board and we are generally disposed to back up any board which wants to protect free discourse. I don't think we're ready to say that we will cover all expenses of any suit which is brought against any board. That's a level of assurance we can't provide.

What would it take to make you feel comfortable? It is after all, an uncertain world. Sometimes we have to rely on faith and the courage of our convictions, no matter what grim scenaria the lawyers may sketch.

59.3 L=5 [jonmc=Jon McIntire] Wed, Jul 28, 1993 (17:12)
Very evocative example. Especially since Masson is involved in the Freud archive scandal, rather like a contemporary religion censoring itself, etc. So is the WELL a series of conversations? It goes out to people undreamed of by the posters (those who post). Is it casual? formal? in-between? experiment? etc.

59.4 L=39 [mo=Maurice Weitman] Wed, Aug 18, 1993 (14:57)
Entering the realm of the theoretical:

What about pornographic (vanilla, kiddie, beastiality... you name it) images stored online here? Certainly if we don't know about it and someone has a file in his/her directory, that's one thing. But what if it's in a private conference's file space, accessible only by those members of the private conference? This is a sticky area because some private conferences are not really secret. Rather, their access is restricted to only those who are on the user list. I would include conferences like wow (women on the WELL) in this category. Other private conferences are not at all publicized.

In this case, there's a public eros conference. Some of the habituees of that conf want to start a private eros conf. They have been very public about its existence and they will no doubt be talking it up in the public forum. They have asked for a file area (something we do for other confs, public and private) in which they'll store all sorts of erotic material, both textual and scanned images (GIF files). These GIF files are the stuff that big problems are made of. We, of course, will not have routine access to this material to ensure that it's not copyrighted, not to mention otherwise problematic.

My concern is that word of the existence of this area will be spread beyond the WELL's borders, exposing us (as it were) to unfavorable publicity and scrutiny. There have been bbses shut down with their equipment confiscated in this kind of situation.

Now then... there are those of us on the board and staff who'd like to have the WELL contain all expressions of life, regardless of what those pesky authorities, Senators, etc. think of its suitability. I must confess that I would like to not be a censor in this or any other regard, but I also don't want the WELL to be known as a panderer or worse, be exposed to the loss of our business.

Where do we go from here?